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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

HULAC, et al.,

**No. C 3:08-1557-JSW**

Plaintiffs,

v.

**DEFENDANT FEDERAL EXPRESS  
CORPORATION'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
AMENDED COMPLAINT**

FEDERAL EXPRESS CORPORATION,

Defendant.

**ANSWER**

Defendant Federal Express Corporation ("FedEx"), by counsel, answers the numbered paragraphs of the Complaint as follows:

**Introduction**

1. Defendant admits that Plaintiffs purport to bring this lawsuit seeking relief pursuant to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 *et seq.*, the Employee Retirement Income and Security Act (ERISA), 29 U.S.C. § 1140, and the California Fair Employment and Housing Act (FEHA), Cal. Gov't Code § 12900 *et seq.*, but denies that Defendant has violated any provision of these Acts and denies that Plaintiffs are entitled to any relief

Defendant's Answer and Affirmative Defenses to Amended Complaint – C 08-1557 JSW

1 whatsoever. Furthermore, Defendant is unable to ascertain how many Plaintiffs exist and how many  
2 are current or former employees of FedEx. Except as expressly admitted herein, Defendant further  
3 denies the remaining allegations contained in Paragraph 1 of the Amended Complaint.

4 2. Defendant denies the allegations of Paragraph 2 of the Amended Complaint.

5 3. Defendant is without sufficient information to form a belief about the truth of whether  
6 all of the individuals listed on Appendix C are California residents the allegations, and therefore  
7 Defendant denies same. Defendant denies the remainder of the allegations of Paragraph 3 of the  
8 Amended Complaint.

9 Jurisdiction

10 4. Defendant admits that Plaintiffs seek to bring this action under the acts referenced in  
11 Paragraph 1 and to invoke jurisdiction as indicated, although Defendant denies that it has violated  
12 any provisions of the ADEA, ERISA, or FEHA. Except as expressly admitted herein, Defendant  
13 denies the remaining allegations contained in Paragraph 4 of the Amended Complaint.

14 Venue

15 5. Defendant denies that venue is appropriate in this District, as a related case with  
16 virtually identical allegations is currently pending in the U.S. District Court for the Central District  
17 of California under the name *Clausnitzer, et al. v. Federal Express Corporation*, No. SACV 05-1269  
18 DOC, and the Central District is therefore the appropriate venue for this action.

19 Parties

20 6. Defendant admits that FedEx is a corporation engaged in the express transportation of  
21 packages and freight through an air-and-ground network, and that it does business throughout the  
22 United States.

23 7. Defendant admits that it is an employer under the definition of 29 U.S.C. § 630(b), 29  
24 U.S.C. § 1002(5), and Cal. Gov't Code § 12926(d). The remainder of the allegations in Paragraph 7  
25 of the Amended Complaint are so vague that Defendant does not have sufficient information to form  
26 a belief about the truth of the allegations, and therefore Defendant denies same.

27 8. Upon information and belief, Defendant admits that the individuals listed on  
28 Appendices A and B are or were employed by FedEx in an hourly-paid position at some time.



1 Operations at all relevant times. Defendant denies all remaining allegations of Paragraph 21 of the  
2 Amended Complaint.

3 22. Defendant admits that it electronically tracks all packages within its delivery system.  
4 Defendant explicitly denies all remaining allegations of Paragraph 22 of the Amended Complaint.

5 23. The allegations of Paragraph 23 of the Amended Complaint are too vague to provide  
6 Defendant sufficient information so as to form a belief about the truth of the allegations, and  
7 therefore Defendant denies same. Defendant admits that some FedEx personnel located in  
8 Memphis, Tennessee, provide some data and instruction to FedEx personnel outside of Memphis  
9 regarding the day-to-day operations of the company, and that some FedEx personnel outside of  
10 Memphis access systems at Memphis and other locations regarding the day-to-day operations of the  
11 company. Defendant denies all remaining allegations of Paragraph 23 of the Amended Complaint.

12 24. Defendant admits that FedEx personnel at station locations provide information to  
13 FedEx personnel at Memphis and other locations regarding, among other things, delivery times and  
14 drive times required to complete scheduled routes. Defendant admits that all aspects of delivery  
15 routes are monitored and adjusted as necessary by FedEx personnel at the stations and at other  
16 locations. Defendant denies all remaining allegations of Paragraph 24 of the Amended Complaint.

17 25. Defendant admits that couriers typically start a route by loading packages for delivery  
18 from a station and typically return to a station after picking up packages from pickup points.  
19 Couriers are typically assigned to a particular station, but may be transferred to another station as  
20 needed. Defendant denies all remaining allegations of Paragraph 25 of the Amended Complaint.

21 26. Defendant admits that the various job codes encompassed by the “courier”  
22 description include job duties of delivering and picking up packages, operating vehicles for delivery  
23 and pickup, and selection and inspection of assigned packages. Defendant denies all remaining  
24 allegations of Paragraph 26 of the Amended Complaint.

25 27. Defendant admits that typically, couriers—whether full time or part time—are  
26 assigned to a regular route or routes, but may have other assignments as necessary. Defendant  
27 denies all remaining allegations of Paragraph 27 of the Amended Complaint.

28 28. Defendant admits that part-time couriers will have the same job duties as a full time

1 courier in the same job code. Defendant denies all remaining allegations of Paragraph 28 of the  
2 Amended Complaint.

3 29. Defendant admits that one of the job duties of a Service Agent is to perform  
4 administrative support functions necessary for efficient station operations. Defendant admits that  
5 one of the job duties of an Operations Manager is to supervise couriers. Defendant admits that one  
6 of the job duties of a Ramp Transport Driver is to deliver loads to stations. Defendant denies all  
7 remaining allegations of Paragraph 29 of the Amended Complaint.

8 30. The allegations of Paragraph 30 of the Amended Complaint are too vague to provide  
9 Defendant sufficient information so as to form a belief about the truth of the allegations, and  
10 therefore Defendant denies same. Defendant admits that FedEx maintains Operations Managers and  
11 Senior Managers at most of its stations, who both play various roles in personnel decisions,  
12 depending on the decision. Defendant admits that the number of Operations Managers or Senior  
13 Managers varies depending on the size of the station. Defendant denies all remaining allegations of  
14 Paragraph 30 of the Amended Complaint.

15 31. Defendant denies the allegations of Paragraph 31 of the Amended Complaint.

16 32. Defendant admits that its MBO/PBO planning process is one component through  
17 which its managers accomplish the overall goals of the company. The remainder of the allegations  
18 in Paragraph 32 of the Amended Complaint are so vague and ill-defined that Defendant does not  
19 have sufficient information to form a belief about the truth of the allegations, and therefore  
20 Defendant denies same.

21 33. Defendant admits that FedEx maintains various corporate policies that apply to  
22 various employee groups, including among others the People Manual that applies to all United States  
23 employees of FedEx who are not subject to a collective bargaining agreement; a Go Express manual  
24 that applies to all couriers, service agents, and station managers; a People Best Practices manual  
25 containing methods applicable to all non-exempt Domestic Ground Operations personnel; a Best  
26 Practices for Ground Operations manual containing methods for station operations; and a Courier  
27 Best Practices manual containing methods for all couriers in the United States. Couriers, service  
28 agents, and ramp transport drivers have various initial and recurrent required training. Defendant

1 denies all remaining allegations of Paragraph 33 of the Amended Complaint.

2 34. Defendant admits that its managers are provided initial and recurrent training at  
3 various times at Memphis and at other locations.

4 35. Defendant admits that each station has periodic budget and performance goals, which  
5 differ by station, and could include, among other factors, on time deliveries, reducing costs, or  
6 reducing overall hours. Defendant denies all remaining allegations of Paragraph 35 of the Amended  
7 Complaint.

8 36. Defendant admits that managers at stations have access to various data about the  
9 station's performance depending on needs and job duties. Defendant denies all remaining  
10 allegations of Paragraph 36 of the Amended Complaint.

11 37. Defendant admits that each route has a stops-per-hour goal for each segment of the  
12 day that might differ depending on the day of the week, and that managers have access to data about  
13 the couriers' performance on each route. Defendant denies all remaining allegations of Paragraph 37  
14 of the Amended Complaint.

15 38. Defendant admits that couriers are expected to perform their delivery duties  
16 satisfactorily, and if they do not, they receive progressive discipline that can culminate in  
17 termination of employment. Defendant denies all remaining allegations of Paragraph 38 of the  
18 Amended Complaint.

19 39. Defendant denies the allegations of Paragraph 39 of the Amended Complaint.

20 40. Defendant denies the allegations of Paragraph 40 of the Amended Complaint.

21 41. Defendant admits that stations have budgets for costs of hourly personnel. Defendant  
22 denies all remaining allegations of Paragraph 41 of the Amended Complaint.

23 42. Defendant denies the allegations of Paragraph 42 of the Amended Complaint.

24 43. Defendant admits that Policy 2-50 Performance Improvement of the People Manual  
25 provides that any employee of FedEx who receives three written notices of deficiency—including  
26 Warning Letters or Performance Reminders, but not including Counselings—within a twelve-month  
27 period normally has his employment terminated, and that the second written notice should advise the  
28 employee of this. Defendant denies all remaining allegations of Paragraph 43 of the Amended

1 Complaint.

2 44. Defendant admits that Policy 2-5 Acceptable Conduct of the People Manual provides  
3 that any employee of FedEx who receives three written notices of deficiency—including Warning  
4 Letters or Performance Reminders, but not including Counselings—within a twelve-month period  
5 normally has his employment terminated, and that the second written notice should advise the  
6 employee of this. Defendant also admits that Policy 2-5 allows termination of employment for some  
7 policy violations on the first offense. Defendant denies all remaining allegations of Paragraph 44 of  
8 the Amended Complaint.

9 45. Defendant denies the allegations of Paragraph 45 of the Amended Complaint.

10 46. Defendant admits that Policy 2-5 Acceptable Conduct of the People Manual provides  
11 that any employee of FedEx who receives three written notices of deficiency—including Warning  
12 Letters or Performance Reminders, but not including Counselings—within a twelve-month period  
13 normally has his employment terminated, and that the second written notice should advise the  
14 employee of this. Defendant also admits that Policy 2-5 allows termination of employment for some  
15 policy violations on the first offense. Defendant denies all remaining allegations of Paragraph 46 of  
16 the Amended Complaint.

17 47. Defendant admits that its managers are familiar with Best Practices methods for  
18 couriers, that they ride along with couriers on check rides to evaluate Best Practices, and that  
19 managers' observations on a check ride may influence the stops-per-hour for a particular route.  
20 Defendant denies all remaining allegations of Paragraph 47 of the Amended Complaint.

21 48. Defendant denies the allegations of Paragraph 48 of the Amended Complaint.

22 49. The allegations in Paragraph 49 of the Amended Complaint are so vague and ill-  
23 defined that Defendant does not have sufficient information to form a belief about the truth of the  
24 allegations, and therefore Defendant denies same.

25 50. Defendant denies the allegations of Paragraph 50 of the Amended Complaint.

26 51. Defendant admits that an email from Bill Logue to All DGO Management discussed  
27 route reduction and improvement in staffing goals. Defendant denies all remaining allegations of  
28 Paragraph 51 of the Amended Complaint.

52. Defendant denies the allegations of Paragraph 52 of the Amended Complaint.

53. Defendant denies the allegations of Paragraph 53 of the Amended Complaint.

54. Defendant denies the allegations of Paragraph 54 of the Amended Complaint.

55. Defendant denies that any of its policies discriminates against any Plaintiff or any employee over 40 years of age.

56. Defendant denies the allegations of Paragraph 56 of the Amended Complaint.

57. Defendant admits that its Senior Managers are evaluated in part on how their stations perform, which includes efficient use of personnel and cost measures. Defendant denies all remaining allegations of Paragraph 57 of the Amended Complaint.

58. Defendant denies the allegations of Paragraph 58 of the Amended Complaint.

59. Defendant admits that its managers are evaluated in part on how their stations or workgroups perform, which includes efficient use of personnel and cost measures. Defendant denies all remaining allegations of Paragraph 59 of the Amended Complaint.

60. Defendant denies that managers are normally terminated for failing to meet staffing goals.

61. Defendant denies the allegations of Paragraph 61 of the Amended Complaint.

62. Defendant admits that its managers are given performance reviews. Defendant admits that its managers may receive bonuses, and that those bonuses are based in part on the station's performance. Defendant denies all remaining allegations of Paragraph 62 of the Amended Complaint.

63. Defendant admits that a station's performance is measured on multiple factors, which include without limitation delivery accuracy, volume, personnel costs, and other costs at the station. Defendant denies all remaining allegations of Paragraph 63 of the Amended Complaint.

64. Defendant denies the allegations of Paragraph 64 of the Amended Complaint.

65. Defendant admits that managers at stations are regularly advised by FedEx personnel at Memphis or other locations about factors affecting their budgets.

66. Defendant admits that FedEx provides a defined benefit plan to full time employees, including without limitation couriers, service agents, operations managers, and ramp transport



1 drivers. Defendant denies all remaining allegations of Paragraph 66 of the Amended Complaint.

2 67. Defendant has insufficient information so as to form a belief about the truth of the  
3 allegations of Paragraph 67 of the Amended Complaint, and therefore Defendant denies same.

4 68. The allegations of Paragraph 68 of the Amended Complaint are too nonsensical to  
5 provide Defendant sufficient information so as to form a belief about the truth of the allegations, and  
6 therefore Defendant denies same. In particular, contributions to a defined benefit plan are not  
7 specifically attributable to any plan participant, and therefore there is not a “refund” associated with  
8 a departing participant and no amounts to be “recovered.”

9 69. Defendant admits that FedEx makes available a health care plan for its permanent  
10 part time and full time employees, and that the cost to FedEx depends on many factors, including  
11 demographics and the age of the plan’s population. Defendant denies all remaining allegations of  
12 Paragraph 69 of the Amended Complaint.

13 70. Defendant has insufficient information so as to form a belief about the truth of the  
14 allegations of Paragraph 70 of the Amended Complaint, and therefore Defendant denies same.

15 71. Defendant admits that FedEx provides the same retiree medical benefit to all  
16 permanent part time and full time employees who meet eligibility requirements at retirement, and  
17 that FedEx provides a contribution to the cost of retiree health for those eligible employees.  
18 Defendant denies all remaining allegations of Paragraph 71 of the Amended Complaint.

19 72. Defendant admits that FedEx recognizes a liability for future retiree health benefits  
20 over the period the employee earns service toward the benefit eligibility. Defendant denies all  
21 remaining allegations of Paragraph 72 of the Amended Complaint.

22 73. The allegations of Paragraph 68 of the Amended Complaint are too nonsensical to  
23 provide Defendant sufficient information so as to form a belief about the truth of the allegations, and  
24 therefore Defendant denies same. In particular, FedEx pays retiree health benefits as they are  
25 incurred after retirement. There is no pre-funding of benefits, and therefore there are no amounts to  
26 be “recovered.” The retiree health liability reflected in FedEx’s financial statements is measured  
27 once annually based upon the eligible employees who are employed or receiving retiree health  
28 benefits as of the valuation date.

1           74. Defendant admits that its liabilities for retiree healthcare costs decreased from 2006 to  
2 2007, primarily attributable to changes in Financial Accounting Standards valuation assumptions and  
3 a comparison of those assumptions to actual experience. Defendant denies the remainder of the  
4 allegations of Paragraph 74 of the Amended Complaint.

5           75. Defendant denies the allegations of Paragraph 75 of the Amended Complaint.

6           76. Defendant admits that FedEx employees who were accruing benefits under the  
7 traditional pension benefit formula began accruing benefits under the portable pension account  
8 formula beginning June 1, 2008. Defendant denies all remaining allegations of Paragraph 76 of the  
9 Amended Complaint.

10          77. Defendant denies the allegations of Paragraph 77 of the Amended Complaint.

11          78. Defendant has insufficient information so as to form a belief about the truth of the  
12 allegations of Paragraph 78 of the Amended Complaint, and therefore Defendant denies same.  
13 Defendant admits that the increases in benefit value as an employee ages is only one factor in the  
14 annual funding cost of the whole plan, and annual funding costs are not determined for individuals  
15 but at the whole plan level.

16          79. Defendant admits that FedEx makes available a health care plan, a medical absence  
17 policy, and a short-term disability plan for its permanent part time and full time employees, and  
18 admits that FedEx makes available a long-term disability plan for its permanent full time employees.  
19 Defendant denies all remaining allegations of Paragraph 79 of the Amended Complaint.

20          80. Defendant has insufficient information so as to form a belief about the truth of the  
21 allegations of Paragraph 80 of the Amended Complaint, and therefore Defendant denies same.

22          81. Defendant denies the allegations of Paragraph 81 of the Amended Complaint.

23          82. Defendant admits that most couriers carry devices that scan information about  
24 packages, and that most delivery vehicles are equipped to transmit information from some of these  
25 devices. Defendant denies all remaining allegations of Paragraph 82 of the Amended Complaint.

26          83. Defendant admits that the tracking system records a package's activity according to  
27 the instructions of the user of the scanning device. Defendant denies all remaining allegations of  
28 Paragraph 83 of the Amended Complaint.

1           84. Defendant admits that FedEx maintains policies regarding the accuracy of scanning  
2 packages, including requirements about when a Proof of Delivery scan is appropriate. Defendant  
3 denies all remaining allegations of Paragraph 84 of the Amended Complaint.

4           85. Defendant denies the allegations of Paragraph 85 of the Amended Complaint.

5           86. Defendant admits that a FedEx employee's employment will normally be terminated  
6 for deliberate falsification of company documents, including but not limited to delivery records.

7           87. Defendant denies the allegations of Paragraph 87 of the Amended Complaint.

8           88. Defendant admits that audits of delivery records are not routine and are normally  
9 performed only when necessary. Defendant denies the remaining allegations of Paragraph 88 of the  
10 Amended Complaint.

11          89. Defendant denies the allegations of Paragraph 89 of the Amended Complaint.

12          90. Defendant denies the allegations of Paragraph 90 of the Amended Complaint.

13          91. Defendant denies the allegations of Paragraph 91 of the Amended Complaint.

14          92. Defendant denies the allegations of Paragraph 92 of the Amended Complaint.

15          93. Defendant denies the allegations of Paragraph 93 of the Amended Complaint.

16          94. Defendant denies the allegations of Paragraph 94 of the Amended Complaint.

17          95. Defendant denies the allegations of Paragraph 95 of the Amended Complaint.

18          96. Defendant denies the allegations of Paragraph 96 of the Amended Complaint.

19          97. Defendant denies the allegations of Paragraph 97 of the Amended Complaint.

20          98. Defendant denies the allegations of Paragraph 98 of the Amended Complaint.

21          99. Defendant denies the allegations of Paragraph 99 of the Amended Complaint.

22          100. Defendant denies the allegations of Paragraph 100 of the Amended Complaint.

23          101. Defendant denies the allegations of Paragraph 101 of the Amended Complaint.

24          102. Defendant denies the allegations of Paragraph 102 of the Amended Complaint.

25          103. Defendant denies the allegations of Paragraph 103 of the Amended Complaint.

26          104. Defendant denies the allegations of Paragraph 104 of the Amended Complaint.

27          105. Defendant denies the allegations of Paragraph 105 of the Amended Complaint.

28          106. Defendant denies the allegations of Paragraph 106 of the Amended Complaint.

107. Defendant denies the allegations of Paragraph 107 of the Amended Complaint.

108. Defendant denies the allegations of Paragraph 108 of the Amended Complaint.

109. Defendant denies the allegations of Paragraph 109 of the Amended Complaint.

Collective Action Allegations

110. Defendant denies the allegations of Paragraph 110 of the Amended Complaint.

111. Defendant denies the allegations of Paragraph 111 of the Amended Complaint.

112. Defendant admits that FedEx has and continues to employ thousands of hourly employees over 44 years of age with ten years of service.

113. Defendant denies the allegations of Paragraph 113 of the Amended Complaint.

114. Defendant denies the allegations of Paragraph 114 of the Amended Complaint.

Class Allegations – California Class

115. Defendant admits that Fred Hulac, Kathy Fingarson, and William Stewart are current or former employees of FedEx working at a FedEx location in California. Defendant has insufficient information so as to form a belief about the truth of the remainder of the allegations of Paragraph 115 of the Amended Complaint (in part because no Appendix D was attached to the Amended Complaint), and therefore Defendant denies same.

116. The allegations of Paragraph 116 of the Amended Complaint are unintelligible and incomplete and do not provide Defendant with sufficient information to form a belief about the truth of the allegations, and therefore Defendant denies same.

117. Defendant denies the allegations of Paragraph 117 of the Amended Complaint.

118. Defendant denies the allegations of Paragraph 118 of the Amended Complaint.

119. Defendant denies the allegations of Paragraph 119 of the Amended Complaint.

120. [No corresponding paragraph in Amended Complaint.]

121. [No corresponding paragraph in Amended Complaint.]

122. Defendant denies the allegations of Paragraph 122 of the Amended Complaint.

123. Defendant denies the allegations of Paragraph 123 of the Amended Complaint.

124. Defendant denies the allegations of Paragraph 124 of the Amended Complaint.

125. Defendant denies the allegations of Paragraph 125 of the Amended Complaint.

Class Allegations – ERISA Class

126. Defendant has insufficient information so as to form a belief about the truth of the remainder of the allegations of Paragraph 126 of the Amended Complaint (in part because Appendices D-E were not attached to the Amended Complaint), and therefore Defendant denies same.

127. Defendant denies the allegations of Paragraph 127 of the Amended Complaint.

128. Defendant denies the allegations of Paragraph 128 of the Amended Complaint.

129. Defendant denies the allegations of Paragraph 129 of the Amended Complaint.

130. Defendant denies the allegations of Paragraph 130 of the Amended Complaint.

131. Defendant denies the allegations of Paragraph 131 of the Amended Complaint.

132. Defendant denies the allegations of Paragraph 132 of the Amended Complaint.

133. Defendant denies the allegations of Paragraph 133 of the Amended Complaint.

Representative Class

Terminated

Plaintiff Fred Hulac – California

134. Defendant admits that Fred Hulac was terminated for falsification of company records. Defendant denies the remaining allegations of Paragraph 134 of the Amended Complaint.

135. Defendant admits that Hulac was terminated for falsification of company records. Defendant denies the remaining allegations of Paragraph 135 of the Amended Complaint.

Plaintiff Larry Mungiello – New Jersey

136. Defendant admits that Larry Mungiello was terminated for falsification of company records. Defendant denies the remaining allegations of Paragraph 136 of the Amended Complaint.

137. Defendant admits that Mungiello was 64 years old when he was terminated for falsification of delivery records. Defendant admits that Mungiello received the two Counselings quoted in Paragraph 137 of the Amended Complaint over a year before his termination, but denies any implication that the Counselings were a cause of the termination. Defendant denies the remaining allegations of Paragraph 137 of the Amended Complaint.

Plaintiff Sandra Mason – Texas

1           138. Defendant has insufficient information so as to form a belief about the truth of the  
2 allegations of Paragraph 138 of the Amended Complaint, and therefore Defendant denies same. The  
3 Sandra Mason with the date of birth listed on Appendix A was never an Operations Manager.

4           139. Defendant has insufficient information so as to form a belief about the truth of the  
5 allegations of Paragraph 139 of the Amended Complaint, and therefore Defendant denies same.

6 Plaintiff Romas Jasiulevicius – Florida

7           140. Defendant admits that Jasiulevicius was terminated on July 12, 2007, and that he  
8 received a Counseling for his attendance rate a year before that. Defendant admits that a lower rate  
9 of attendance was required in prior years, but denies that a different rate was ever used for couriers  
10 over 40 and couriers under 40 years of age. Defendant denies the remaining allegations of  
11 Paragraph 140 of the Amended Complaint.

12           141. Defendant admits that Jasiulevicius received the first quoted Counseling in 2006, a  
13 year before his termination, but notes that the quoted Counseling is incomplete and that a minimum  
14 rate of 96.9 is included on the Counseling. Defendant admits that Mike Smyth received the second  
15 quoted Counseling in 2000, but denies any implication that the 96.0 standard was different for  
16 younger or older couriers. Defendant also admits that Smyth received another Counseling in 2002  
17 noting a 96.9 standard. Defendant admits that Jasiulevicius received the third quoted Counseling in  
18 2006, and also admits that Smyth received an identical Counseling at the same time.

19 Plaintiff Rocco Notarfrancesco – New Jersey

20           142. Defendant admits that Notarfrancesco repeatedly received Counselings, Warning  
21 Letters and Performance Reminders for his repeated poor performance as a courier, but denies any  
22 implication that other couriers with similar conduct were treated differently. Defendant denies the  
23 remaining allegations of Paragraph 142 of the Amended Complaint.

24           143. Defendant admits that Notarfrancesco was terminated for falsification of company  
25 records, and that his managers had repeatedly issued Counselings and Performance Reminders to  
26 Notarfrancesco for poor performance. Defendant denies the remaining allegations of Paragraph 143  
27 of the Amended Complaint.

28 Still Employed

Plaintiff Barry Barnett – Indiana

144. Defendant denies the allegations of Paragraph 144 of the Amended Complaint.

145. Defendant admits that Barnett received the first quoted Counseling in 2003, and that he received the second quoted Counseling in 2006.

146. Defendant denies the allegations of Paragraph 146 of the Amended Complaint.

147. Defendant denies the allegations of Paragraph 147 of the Amended Complaint. The chart contains numerous inaccuracies in virtually every section, including the addition of individuals that appear no where else in the Amended Complaint or on Appendices A-C.

148. Defendant admits that Fred Hulac's birth date in the Amended Complaint is consistent with the records of FedEx, that he was employed as a courier for FedEx in its STSA station located in Santa Rosa, California, and that he was employed with FedEx for more than 22 years. Defendant denies all remaining allegations of Paragraph 148 of the Amended Complaint.

149. Defendant admits that it terminated Fred Hulac's employment on January 9, 2007. Defendant has insufficient information to form a belief about the truth of the remainder of the allegations of Paragraph 149 of the Amended Complaint, and therefore Defendant denies same.

150. Defendant has insufficient information to form a belief about the truth of the allegations of Paragraph 150 of the Amended Complaint, and therefore Defendant denies same.

151. Defendant has insufficient information to form a belief about the truth of the allegations of Paragraph 151 of the Amended Complaint, and therefore Defendant denies same.

152. Defendant has insufficient information to form a belief about the truth of the allegations of Paragraph 152 of the Amended Complaint, and therefore Defendant denies same.

153. Defendant denies the allegations of Paragraph 153 of the Amended Complaint.

154. Defendant denies the allegations of Paragraph 154 of the Amended Complaint.

155. Defendant admits that it terminated Fred Hulac's employment approximately 11 weeks before Hulac turned 55 years old. Defendant has insufficient information to form a belief about the truth of the remainder of the allegations of Paragraph 155 of the Amended Complaint, and therefore Defendant denies same.

156. Defendant denies the allegations of Paragraph 156 of the Amended Complaint.



1           157. The allegations of Paragraph 157 of the Amended Complaint are unintelligible and  
2 incomplete and do not provide Defendant with sufficient information to form a belief about the truth  
3 of the allegations, and therefore Defendant denies same. To the extent any discriminatory conduct is  
4 alleged in Paragraph 157 of the Amended Complaint, Defendant denies such conduct.

5 Fingarson

6           158. Defendant admits that Kathy Fingarson's birth date in the Amended Complaint is  
7 consistent with the records of FedEx, that she was employed as a courier for FedEx in its NOTA  
8 station located in Petaluma, California, and that earlier was employed as a courier for FedEx in its  
9 STSA station located in Santa Rosa, California, and that she was hired by FedEx in 1988. Defendant  
10 denies all remaining allegations of Paragraph 158 of the Amended Complaint.

11           159. Defendant denies the allegations of Paragraph 159 of the Amended Complaint.

12 Stewart

13           160. Defendant admits that William Stewart's birth date in the Amended Complaint is  
14 consistent with the records of FedEx, that he was employed as a courier for FedEx in its STSA  
15 station located in Santa Rosa, California, that he was employed with FedEx for more than 23 years,  
16 and that his regular and overtime hours for the years 2004, 2005, and 2006 are accurately set forth in  
17 the Amended Complaint. Defendant denies all remaining allegations of Paragraph 160 of the  
18 Amended Complaint.

19           161. Defendant denies the allegations of Paragraph 161 of the Amended Complaint.

20 EEOC Charges – Notice to the Defendant of Allegations of Age  
21 Discriminatory Employment Practices

22           162. Defendant denies the allegations of Paragraph 162 of the Amended Complaint.

23           163. Defendant denies the allegations of Paragraph 163 of the Amended Complaint.

24           164. Defendant denies the allegations of Paragraph 164 of the Amended Complaint.

25           165. Defendant denies the allegations of Paragraph 165 of the Amended Complaint.

26           166. Defendant admits that Ronald Clausnitzer and Gerald Freeman filed charges with the  
27 EEOC in 1997 alleging age discrimination. Defendant notes that no findings of age discrimination  
28 ever resulted from these charges, which have been finally dismissed, and these charges are therefore



1 irrelevant and cannot constitute notice of claims of violations in this matter.

2 167. Defendant admits that a meritless lawsuit was filed in Florida in 1999 alleging  
3 nationwide discrimination, but that no class was certified, and that the lawsuit was dismissed with  
4 prejudice to the named plaintiffs in that matter.

5 168. The allegations of Paragraph 168 of the Amended Complaint are unintelligible and  
6 incomplete and do not provide Defendant with sufficient information to form a belief about the truth  
7 of the allegations, and therefore Defendant denies same.

8 169. Defendant admits that Richard Boyd filed charge number 150-2004-00821 and, on  
9 information and belief, that he received a Right to Sue letter in 2005.

10 170. Defendant admits that Ronald Clausnitzer and other couriers filed charges with the  
11 EEOC in 1997 alleging a pattern of age discrimination. Defendant notes that no findings of a pattern  
12 of age discrimination ever resulted from these charges, which have been finally dismissed, and these  
13 charges are therefore irrelevant and cannot constitute notice of claims of violations in this matter.

14 171. Defendant denies the allegations of Paragraph 171 of the Amended Complaint.

15 172. Defendant admits that Raul Armendariz filed charge number 540-2007-01910.  
16 Defendant has insufficient information to form a belief about the truth of the remainder of the  
17 allegations of Paragraph 172 of the Amended Complaint, and therefore Defendant denies same.

18 173. Defendant admits that Jeff McEllrath filed charge number 551-2006-00517.  
19 Defendant has insufficient information to form a belief about the truth of the remainder of the  
20 allegations of Paragraph 173 of the Amended Complaint, and therefore Defendant denies same.

21 174. Defendant admits that Michael Parks filed charge number 494-2007-01495.  
22 Defendant has insufficient information to form a belief about the truth of the remainder of the  
23 allegations of Paragraph 174 of the Amended Complaint, and therefore Defendant denies same.

24 175. Defendant admits that Michael Breitenstein filed charges with the EEOC and/or the  
25 Ohio Civil Rights Commission, but Defendant denies the remainder of the allegations of Paragraph  
26 175 of the Amended Complaint.

27 176. Defendant admits that Fred Hulac filed charge number 550-2008-00613. Defendant  
28 has insufficient information to form a belief about the truth of the remainder of the allegations of

1 Paragraph 176 of the Amended Complaint, and therefore Defendant denies same.

2 177. Defendant admits that Kathy Fingarson filed a charge with the EEOC and/or the  
3 California Department of Fair Employment and Housing. Defendant has insufficient information to  
4 form a belief about the truth of the remainder of the allegations of Paragraph 177 of the Amended  
5 Complaint, and therefore Defendant denies same.

6 178. Defendant admits that David Williams filed a charge with the EEOC in 2007.  
7 Defendant has insufficient information to form a belief about the truth of the remainder of the  
8 allegations of Paragraph 178 of the Amended Complaint, and therefore Defendant denies same.

9 179. Defendant admits the allegations of Paragraph 179 of the Amended Complaint.

10 180. Defendant has insufficient information to form a belief about the truth of the  
11 allegations of Paragraph 180 of the Amended Complaint, and therefore Defendant denies same.

12 181. Defendant admits that Wilma Goree filed a charge with the EEOC in 2005 and  
13 received a Right to Sue letter for that charge in 2005, and that Goree filed a second charge in 2006  
14 and requested a Right to Sue letter in 2007, which was issued. Defendant has insufficient  
15 information to form a belief about the truth of the remainder of the allegations of Paragraph 181 of  
16 the Amended Complaint, and therefore Defendant denies same.

17 182. Defendant admits that Kenneth Kumm filed a charge with the EEOC in 2005 and that  
18 a Right to Sue letter was issued in 2006. Defendant has insufficient information to form a belief  
19 about the truth of the remainder of the allegations of Paragraph 182 of the Amended Complaint, and  
20 therefore Defendant denies same.

21 183. Defendant admits that Edward Jones filed a charge with the EEOC in 2007.  
22 Defendant has insufficient information to form a belief about the truth of the remainder of the  
23 allegations of Paragraph 183 of the Amended Complaint, and therefore Defendant denies same.

24 184. Defendant has insufficient information to form a belief about the truth of the  
25 allegations of Paragraph 184 of the Amended Complaint, and therefore Defendant denies same.

26 185. Defendant has insufficient information so as to form a belief about the truth of the  
27 allegations of Paragraph 185 of the Amended Complaint (in part because no Appendix D was  
28 attached to the Amended Complaint), and therefore Defendant denies same.

Claim One

For Discrimination in Violation of the ADEA  
(On Behalf of All Plaintiffs and the Class)

186. Defendant hereby incorporates its answers above to Paragraphs 1 through 191 [sic] of the Amended Complaint.

187. Defendant denies the allegations of Paragraph 187 of the Amended Complaint.

188. Defendant denies the allegations of Paragraph 188 of the Amended Complaint.

189. Defendant denies the allegations of Paragraph 189 of the Amended Complaint.

190. Defendant denies the allegations of Paragraph 190 of the Amended Complaint.

191. Defendant denies the allegations of Paragraph 191 of the Amended Complaint.

192. Defendant denies the allegations of Paragraph 192 of the Amended Complaint.

193. Defendant denies the allegations of Paragraph 193 of the Amended Complaint.

194. Defendant denies the allegations of Paragraph 194 of the Amended Complaint.

195. Defendant denies the allegations of Paragraph 195 of the Amended Complaint.

196. Defendant denies the allegations of Paragraph 196 of the Amended Complaint.

197. Defendant denies the allegations of Paragraph 197 of the Amended Complaint.

198. Defendant denies the allegations of Paragraph 198 of the Amended Complaint.

199. Defendant denies the allegations of Paragraph 199 of the Amended Complaint.

200. Defendant denies the allegations of Paragraph 200 of the Amended Complaint.

201. Defendant denies the allegations of Paragraph 201 of the Amended Complaint.

202. Defendant denies the allegations of Paragraph 202 of the Amended Complaint.

203. Defendant denies the allegations of Paragraph 203 of the Amended Complaint.

Claim Two

For Violation of Cal. Gov't Code § 12940  
(On Behalf of the Class of California Residents)

204. Defendant hereby incorporates its answers above to Paragraphs 1 through 191 of the Amended Complaint.

205. Paragraph 205 of the Amended Complaint does not allege a statement that can be answered, and Defendant therefore denies same.

123. Paragraph 206 of the Amended Complaint does not allege a statement that can be

1 answered, and Defendant therefore denies same.

2 207. Defendant admits the allegations of Paragraph 207 of the Amended Complaint.

3 208. Defendant denies the allegations of Paragraph 208 of the Amended Complaint.

4 209. Defendant denies the allegations of Paragraph 209 of the Amended Complaint.

5 210. Defendant denies the allegations of Paragraph 210 of the Amended Complaint.

6 211. Defendant denies the allegations of Paragraph 211 of the Amended Complaint.

7 212. Defendant denies the allegations of Paragraph 212 of the Amended Complaint.

8 213. Defendant denies the allegations of Paragraph 213 of the Amended Complaint.

9 214. Defendant denies the allegations of Paragraph 214 of the Amended Complaint.

10 215. Defendant denies the allegations of Paragraph 215 of the Amended Complaint.

11 216. Defendant denies the allegations of Paragraph 216 of the Amended Complaint.

12 217. Defendant denies the allegations of Paragraph 217 of the Amended Complaint.

13 218. Defendant denies the allegations of Paragraph 218 of the Amended Complaint.

14 Claim Three

15 For Violation of ERISA § 510

16 219. Defendant hereby incorporates its answers above to Paragraphs 1 through 191 of  
17 the Amended Complaint.

18 220. Defendant admits the allegations of Paragraph 220 of the Amended Complaint.

19 221. Defendant denies that all Plaintiffs have been eligible to participate in plans  
20 qualified under ERISA.

21 222. Defendant denies the allegations of Paragraph 222 of the Amended Complaint.

22 223. Defendant denies the allegations of Paragraph 223 of the Amended Complaint.

23 224. Defendant denies the allegations of Paragraph 224 of the Amended Complaint.

24 225. Defendant denies the allegations of Paragraph 225 of the Amended Complaint.

25 226. Defendant denies the allegations of Paragraph 226 of the Amended Complaint.

26 227. Defendant denies the allegations of Paragraph 227 of the Amended Complaint.

27 228. Defendant denies that any Plaintiff is entitled to any relief whatsoever under ERISA  
28 or under any theory.

1           229. Defendant denies any allegation in Paragraphs 1 through 133 of the Amended  
2 Complaint that are not specifically admitted in the preceding Paragraphs 1 through 133 of this  
3 Answer.

4           230. To the extent that the Prayer for Relief in the Amended Complaint states any  
5 allegations or requires any answer, Defendant hereby denies any and all factual allegations in the  
6 Prayer for Relief and denies that any Plaintiff is entitled to any relief in this matter. Defendant  
7 denies that class certification is appropriate, that any injunctive or equitable relief is warranted, or  
8 that any monetary damages are appropriate in this matter.

9                           **AFFIRMATIVE AND OTHER DEFENSES**

10           231. Defendant avers that venue is not proper in this district.

11           232. Defendant avers that Plaintiffs have failed to state a claim upon which relief can be  
12 granted.

13           233. Some or all of Plaintiffs' claims are barred by the doctrines of res judicata or  
14 collateral estoppel.

15           234. Defendant avers that Plaintiffs have failed to mitigate damages, if any. To that  
16 extent, Plaintiffs may not recover from Defendants.

17           235. Plaintiffs' damages, if any, should be offset by any subsequent earnings or benefits  
18 and by any damages caused by Plaintiffs to Defendant.

19           236. With regard to some or all of the matters alleged in each purported cause of action  
20 in the Amended Complaint, Plaintiffs are guilty of unclean hands.

21           237. By their own inequitable conduct with respect to the matters alleged in their  
22 Amended Complaint, Plaintiffs are estopped from asserting some or all of the claims in their  
23 Amended Complaint.

24           238. At all times referred to in the Amended Complaint, Defendant dealt with Plaintiffs  
25 in good faith and in no way acted wantonly, maliciously, or oppressively.

26           239. Because of Plaintiffs' negligence or improper conduct, acts or omissions, each of  
27 Plaintiffs' purported causes of action is barred by the doctrine of waiver.

28           240. Defendant avers that some Plaintiffs have failed to file a timely charge of

1 discrimination with respect to any act alleged to have occurred more than 300 days from the filing  
2 of the charge of discrimination with the Equal Employment Opportunity Commission or other  
3 state agency and therefore the court lacks jurisdiction of the subject matter of such alleged acts.

4 241. Defendant avers that some Plaintiffs have failed to file a timely charge of  
5 discrimination with respect to any act alleged to have occurred more than 180 days from the filing  
6 of the charge of discrimination with the Equal Employment Opportunity Commission or other  
7 state agency and therefore the court lacks jurisdiction of the subject matter of such alleged acts.

8 242. Defendant avers that some Plaintiffs have not filed an EEOC Charge at least 60  
9 days prior to initiating this suit, as required by the 29 U.S.C. § 626, or within the earlier of 300  
10 days after the alleged unlawful practice occurred or thirty days after they received notice of the  
11 terminations of state law proceedings as required by 29 U.S.C. § 626.

12 243. Defendant avers that some Plaintiffs may not bring this suit because they have not  
13 exhausted their state remedies as required by 29 U.S.C. § 633(b).

14 244. Defendant avers that this action and the remedies sought are barred by the failure of  
15 Plaintiffs to comply with all conditions precedent to the commencement of this action.

16 245. Defendant avers that some or all of Plaintiffs' claims are barred by Plaintiffs'  
17 failure to exhaust administrative remedies.

18 246. Defendant avers that this action and the remedies sought are barred by Plaintiffs'  
19 failure to comply with the applicable provisions of any applicable state discrimination laws,  
20 including, but not limited to, the California Fair Employment and Housing Act.

21 247. Defendant avers that Plaintiffs are estopped and barred from alleging in this action  
22 matters that were not properly alleged or within the scope of charges timely filed with the Equal  
23 Employment Opportunity Commission or any applicable state agency.

24 248. Defendant avers that its actions with respect to Plaintiffs were based upon valid  
25 business reasons not related to Plaintiffs' age or any other unlawful basis.

26 249. Defendant avers that at all times relevant to this suit it has acted in good faith with  
27 regard to Plaintiffs and had reasonable grounds for believing its actions were not in violation of  
28 any law.

1           250. Defendant avers that Plaintiffs' claims for liquidated damages are barred because  
2 they cannot prove by clear and convincing evidence that Defendant acted with actual malice or  
3 willfulness to them or anyone else.

4           251. Plaintiffs' claims for liquidated damages are barred since the act or omission giving  
5 rise to this action was in good faith and Defendant has reasonable grounds for believing that its act  
6 or omission was not a violation of the ADEA or any state law.

7           252. The employment decisions or actions of which Plaintiffs complain were based on  
8 reasonable factors other than age.

9           253. The employment decisions or actions of which Plaintiffs complain were based upon  
10 a bona fide seniority system.

11           254. The employment decisions or actions of which Plaintiffs complain were based upon  
12 a bona fide employment benefit plan.

13           255. Any claims under state law are preempted by the Employee Retirement Income  
14 Security Act, 29 U.S.C. § 1144 *et seq.*

15           256. To the extent Plaintiffs are entitled to any benefits, which is denied, the proper  
16 remedy would be a declaratory judgment or order to pay benefits pursuant to the terms of the Plan,  
17 rather than an award of damages or other direct monetary relief.

18           257. Plaintiffs are not entitled to punitive, compensatory or other extra-contractual  
19 damages under the substantive provisions of the Employee Retirement Income Security Act.

20           258. Under no circumstances will Plaintiffs be entitled to an award of any attorneys' fees  
21 or costs incurred in the administrative process or prior to the filing of this action.

22           259. Any discipline or discharge of which Plaintiffs complain was based upon good  
23 cause.

24           260. Defendant avers that Plaintiffs' alleged harassment claims are barred by Plaintiffs'  
25 failure to report the alleged acts of harassment to a representative of Defendant.

26           261. Defendant avers that, in the event that any of the allegations of unlawful conduct  
27 contained in the Amended Complaint are found to have merit, Defendant took prompt and  
28 effective action to remedy any such acts and has no liability for them.

1           262. Defendant avers that it exercised reasonable care to prevent and correct promptly  
2 any harassing behavior.

3           263. Defendant avers that Plaintiffs unreasonably failed to take advantage of any  
4 preventative or corrective opportunities provided by Defendant, or to avoid harm otherwise.

5           264. Defendant cannot be held liable for the actions of its employees that it neither  
6 authorized nor ratified.

7           265. Some or all of Plaintiffs do not have standing to pursue the asserted claims or  
8 represent a class on asserted class claims.

9           266. Defendant avers that the Complaint and each cause of action set forth therein are  
10 barred, in whole or in part, by the applicable statutes of limitation but not limited to Code of Civil  
11 Procedure sections 338, 340, and California 343.

12           267. Defendant avers that the provision of California law allowing for the award of  
13 punitive damages and the substantive rules, procedures and standards for determining whether or  
14 not to award them and, if so, in what amount, violate FedEx's rights to due process and equal  
15 protection under the law pursuant to both the United States and California Constitutions.

16           268. The employment decisions or actions of which Plaintiffs complain were based upon  
17 a Bona Fide Occupational Qualification.

18           269. The applicable decisions regarding Plaintiff's claim were fair, reasonable, based on  
19 substantial evidence, consistent with the intent of the Plan, and within the decision-maker's  
20 discretion as provided under the terms of the Plan.

21           270. The determinations and interpretations of Plaintiff's claim were the correct and best  
22 determinations and interpretations of Plan terms and available evidence.

23           271. Plaintiff's claims are barred by the unambiguous terms of the Plan.

24           272. The employment decisions or actions of which Plaintiffs complain were based upon  
25 a valid and lawful voluntary early retirement incentive plan.

26           273. Defendant reserves the right to assert further affirmative defenses as they become  
27 evident through discovery or investigation.  
28



1 WHEREFORE, having fully answered, Defendant prays that this Court enter judgment in  
2 its favor, including reasonable costs, attorneys' fees, and such other relief as may be just and  
3 proper.

4  
5 Dated: June 5, 2008

6 /s/ Edward J. Efkeman  
7 Edward J. Efkeman (Admitted *Pro Hac Vice*)  
8 David S. Wilson, III (Bar No. 174185)  
9 FEDERAL EXPRESS CORPORATION  
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**PROOF OF SERVICE**

**STATE OF TENNESSEE, COUNTY OF SHELBY**

I hereby certify that on June 5, 2008, I electronically filed Defendant Federal Express Corporation's Answer and Affirmative Defenses with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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